

REMARKS

Claims 21-30 are currently pending in this application.

Species Restriction Requirement

The Examiner has required restriction to one of the following Species under 35 U.S.C. § 121:

Species A: a CD40-specific antibody; or

Species B: a CD40-bispecific antibody.

The Examiner has required further restriction to one of the following Species if Species B is elected:

Species A: 4-1BB; or

Species B: CD28.

In the Office Action, the Examiner contends that the inventions are distinct because allegedly their structures and modes of action are different.

The Applicants hereby elect to prosecute Species A, which is directed to a CD40-specific antibody. The claims readable on Species A are claims 21-24 and 29-30. Although Applicants are making the above election to be fully responsive to the Restriction Requirement, Applicants respectfully traverse the Requirement and reserve the right to petition under 37 C.F.R. § 1.144. In particular, applicants respectfully request reconsideration and withdrawal of the species election requirement to allow prosecution of all species in the present application, for the reasons provided below.

According to Patent Office examining procedures, "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." (MPEP 803).

Applicants respectfully submit that the claims of Species A (a CD40-specific antibody) and Species B (a CD40-bispecific antibody) as designated by the Examiner do not warrant separate examination and search. Both species call for an antibody specific to CD40. Thus, it would be expected that the search and examination of Species A and B can be made jointly

without increasing the burden on the Examiner, because a search directed to antibodies binding to CD40 would cover both mono-specific and bispecific antibodies. Applicants therefore respectfully request examination of both Species A and B in this application.

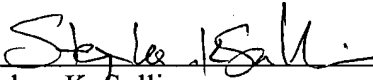
As noted by the Examiner, upon the allowance of a generic claim applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141. The Examiner has acknowledged that claim 21 is generic. Accordingly, Applicants submit that upon allowance of generic claim 21, all the remaining non-elected claims must be considered.

In view of the above remarks, it is respectfully requested that the requirement for species election be reconsidered and that all pending claims be examined together on the merits.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Dated: September 2, 2004

Respectfully submitted,

By 
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